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Order 99-9-16



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

**SERVED** SEP 27 1999

Issued by the Department of Transportation  
on the **27th day of September, 1999**

**Applications of**

**AMERICAN EAGLE AIRLINES, INC.**

**Dockets OST-99-5959 - 4**

**CHARLESTON COUNTY AVIATION  
AUTHORITY/ATLANTIC COAST  
AIRLINES**

**OST-99-5583 - 119**

For exemptions from 14 CFR Part 93, under 49  
U.S.C. 41714

**ORDER AMENDING ALLOCATION OF SLOT EXEMPTIONS  
AT CHICAGO O'HARE AIRPORT**

By this order the Department is amending its decision in Order 99-7-17 by reallocating three Chicago O'Hare Airport slot exemptions to Atlantic Coast Airlines (ACA) to enable ACA to operate nonstop regional jet air service between O'Hare and Charleston, South Carolina.

**BACKGROUND**

By Order 99-7-17, issued July 27, 1999, the Department, *inter alia*, held in abeyance three slot exemptions for an air carrier to be designated following completion of an expedited procedural schedule, to provide nonstop jet service between Chicago O'Hare Airport and Charleston, SC. The Department did so in the context of reallocating a total of eleven slot exemptions previously awarded to American Eagle and Great Lakes Aviation that the recipient airlines had discontinued using.

At the time Order 99-7-17 was issued, two applicants, American Eagle Airlines, Inc and ACA had proposed serving the Chicago O'Hare-Charleston market. ACA's application was filed on April 22, 1999, as a joint application with the Charleston County Aviation Authority for five slot exemptions to enable three roundtrips a day. American Eagle's application, however, was filed on July 13, 1999, just prior to the issuance of Order 99-7-17, and we determined therefore to defer selection of a carrier until other parties had an opportunity to respond to American Eagle's application. We

**also invited other interested carriers to submit competing proposals. No answers or additional applications were filed.**

On August 3 American Eagle withdrew its application.

On August 6 ACA amended its application to indicate that its proposal is now offered solely on its own behalf. ACA also amended its application to acknowledge our determination in Order 99-7-17 that only three O'Hare slot exemptions are available for Charleston service. Accordingly ACA stated that, if selected, it will offer its full service pattern of three roundtrips per day using self-help measures.

As we noted in Order 99-7-17, American Eagle had filed an answer in opposition to various applications, including ACA's application for slot exemptions to serve O'Hare-Charleston. It opposes grant of any additional slot exemptions to ACA or any other United Express carrier on the grounds that the United network carriers have access to more O'Hare slots than American and American Eagle, 1,052 compared to 916.

## **DECISION**

We have already determined in Order 99-7-17 that we would reallocate the three remaining slot exemptions at O'Hare to a carrier to serve Charleston, SC. In summary, we did so on the basis that Charleston is the largest O'Hare market without nonstop service and that the Charleston-O'Hare market is clearly large enough to support nonstop jet service.<sup>1</sup> We affirm those findings here. Thus the only decision at issue in this order is the designation of the air carrier applicant for the reallocation of those exemptions.

ACA's proposal, the only one now pending for Charleston-O'Hare operations, meets our guidelines for exceptional circumstances. It would introduce new nonstop service in a market where none now exists; it would use Stage 3 jet aircraft; and it reasonably appears to be financially and operationally viable. ACA has also assured us that it will use self-help means of supplementing the requested exemptions in order to provide a full service pattern of at least two round trips a day in the market. Such commitments are a critical consideration under our slot exemption policy goal of striving for the maximum public benefit through the use of our slot exemption powers. We will therefore amend Order 99-7-17 to reallocate an additional three slot exemptions to ACA to be used to provide at least two round trips a day between O'Hare and Charleston, SC. ACA may use these exemptions only for the provision of nonstop regional jet service in that city-pair market.

The sole basis of American Eagle's opposition to ACA's application, the comparative slot holdings of American and United, including their codeshare subsidiaries or

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<sup>1</sup> We noted that in 1998 Charleston enplaned nearly 700,000 passengers, and that the Charleston-Chicago market itself generated 63,350 origin-and-destination passengers, and average of 173 a day.

affiliates, has no bearing on the merits of our slot exemption allocations. Our goal in awarding slot exemptions for regional jet operations has been to enhance the access of underserved, nonhub cities to more responsive air transportation. (See, for example, Order 98-4-21, at 15-16) ACA's proposed operations satisfy that objective. What is highly significant, however, is the applicant's willingness to resort to its own resources to supplement the few slot exemptions we are able to allocate in order to heighten the responsiveness and success of service in the markets we designate.

As we required in reallocating slot exemptions for both ACA and American Eagle in Order 99-7-17, we direct ACA to submit in the relevant docket, no later than October 15, a full service schedule, including date of inauguration, for the Charleston-O'Hare market. If ACA responds by that date that it is unable to implement a full schedule, *i.e.*, at least two round trips a day, in the Charleston-O'Hare market, we would intend to withdraw the relevant slot exemptions for further reallocation.

In the event that ACA fails to initiate or discontinues the regional jet services specifically enabled under the slot exemptions allocated here, the effectiveness of the exemptions will terminate.

## **ADMINISTRATIVE TERMS**

As the FAA slot regulation makes clear "slot(s) do not represent a property right but represent an operating privilege subject to absolute FAA control (and) slots may be withdrawn at any time to fulfill the Department's operating needs.. ."

14 CFR 93.223(a). This order should not be construed as conferring on these carriers any ability to sell, trade, transfer, or convey the operating authorities granted by the subject exemptions.

The Department is allocating slot exemptions by this order on the ground that the services proposed by the applicants meet the statutory public interest and exceptional circumstances criteria. The Department reserves the right to modify or terminate such exemption authority if the Department determines that, due to changed circumstances, these criteria are no longer satisfied by an applicant's use of the authority.

This Order is issued under authority delegated in 49 CFR 1.56(a).

## **ACCORDINGLY,**

1. The Department amends ordering paragraph 2 of Order 98-4-21 to read as follows:

The Department grants an exemption from 14 CFR Part 93, Subparts K and S, to Atlantic Coast Airlines, Inc., to enable it to conduct 22 flight operations a day (departures or arrivals) at Chicago O'Hare Airport during the slot-controlled hours of 6:45 a.m. to 9:15 p.m. This authority may be used only to provide nonstop service with

regional jet aircraft between Chicago O'Hare Airport and the cities of Charleston, SC, Charleston, WV, Mobile, AL, Springfield, MO, and Wilkes-Barre, PA;

2. The Department directs Atlantic Coast Airlines to contact the Airspace and Traffic Law Branch of the Office of Chief Counsel in the Federal Aviation Administration as soon as possible following issuance of this order to determine with the **FAA** the actual times for arriving and departing flights authorized by this order;
3. The Department directs Atlantic Coast to submit in Docket OST 99-5583, no later than October 15, their complete schedule and date of inauguration for the market designated in this order;
4. The authority granted under these exemptions is subject to all of the other requirements delineated in 14 CFR Part 93, Subparts K and S, including, but not limited to, the reporting provisions and use or lose requirements; and
5. We will serve this order on all parties in Dockets OST-97-2368, 97-2970, 97-2985, 97-3259, 98-3603, 98-3671, 98-3982, 98-4604, 99-5475, 99-5521, 99-5532, 99-5533, 99-5581, 99-5583, 99-5587, 99-5614, and 99-5959.

By:

**A. BRADLEY MIMS**

Acting Assistant Secretary for Aviation  
and International Affairs

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